

State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

FINAL STATEMENT OF REASONS

Subject Matter:

Workers' Compensation – INDEPENDENT MEDICAL REVIEW

Title 8, California Code of Regulations, sections 9768.1 through 9768.17

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code Sections 133 and 4616, has adopted Article 3.6 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, commencing with Section 9768.1:

Section 9768.1	Definitions
Section 9768.2	Conflicts of Interest
Section 9768.3	Qualifications of Independent Medical Reviewers
Section 9768.4	IMR Contract Application Procedures
Section 9768.5	Physician Contract Application Form
Section 9768.6	Administrative Director's Action on Contract Application Submitted by Physician
Section 9768.7	IMR Request to Be Placed on Voluntary Inactive Status
Section 9768.8	Removal of Physicians from Independent Medical Reviewer List
Section 9768.9	Procedure for Requesting an Independent Medical Review
Section 9768.10	Independent Medical Review Application (Form)
Section 9768.11	In-Person Examination or Record Review IMR Procedure
Section 9768.12	Contents of Independent Medical Review Reports
Section 9768.13	Destruction of Records by the Administrative Director
Section 9768.14	Retention of Records by Independent Medical Reviewer
Section 9768.15	Charges for Independent Medical Reviewers
Section 9768.16	Adoption of Decision
Section 9768.17	Treatment Outside the Medical Provider Network

UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST

As authorized by Government Code §11346.9(d), the Administrative Director incorporates the Initial Statement of Reasons prepared in this matter. There have been no changes to the statutes directly relating to this rulemaking.

The proposed regulation changes are summarized below.

THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A 15-DAY COMMENT PERIOD (March 30, 2005 through April 14, 2005.)

1. Modifications to section 9768.1 Definitions.

Subdivision (a)(10) was added to provide a definition of “panel,” which is a term used in section 9768.9 and Labor Code 4616.4. Subdivision (a)(11) was added to provide a definition of “relevant medical records,” which is a term used in sections 9768.10 and 9768.11. The definitions were provided to ensure that their meaning, as used in the regulations, will be clear to the public. The former number “(10)” is renumbered as “(12).” The phrases “Independent Medical Review” and “Independent Medical Reviewer” were capitalized throughout the section for consistency.

2. Modifications to section 9768.3 Qualifications of Independent Medical Reviewers.

The phrase “Independent Medical Reviewers” was capitalized for consistency with the other sections.

3. Modifications to section 9768.4 IMR Contract Application Procedures.

The phrases “Independent Medical Review” and “Independent Medical Reviewer” were capitalized for consistency with the other sections.

4. Modifications to section 9768.5 Physician Contract Application Form.

The font of the last sentence of the first paragraph in Block 4 (page two of the contract) was changed to bold in order to make it more visible to the physicians. In Block 6 (page three of the contract), the following sentence was added: “If the answer is “NO”, please furnish full particulars on a separate sheet.” This will allow the physicians to clarify the response to the question. In the verification section, the following sentence was added: “I understand that I must maintain the confidentiality of medical records and the review materials consistent with the applicable state and federal law.” This sentence was added to ensure that the physicians maintain the confidentiality of the medical records as required by Labor Code section 4616.4. On page five of the contract, additional specialty codes were added in order to provide additional information to assist the Administrative Director when selecting the appropriate specialty for the injured worker. The phrases “Independent Medical Review” and “Independent Medical Reviewer” were capitalized for consistency.

5. Modifications to section 9768.6 Administrative Director’s Action on Contract Application Submitted by Physician.

The phrases “Independent Medical Reviewer” and “Independent Medical Reviewers” were capitalized for consistency with the other sections.

6. Modifications to section 9768.8 Removal of Physicians from Independent Medical Reviewer List.

This section provides that the Administrative Director may cancel the IMR contract and remove a physician from the independent medical reviewer list if the Administrative Director determines that the physician has failed to meet certain requirements. An additional requirement was added as subdivision (a)(5): “That the physician has failed to maintain the confidentiality of medical records and the review materials consistent with the applicable state and federal law.” This section was added because Labor Code section 4616.4(a)(3)(D) requires the Administrative Director ensure that the Independent Medical Reviewer ensures the confidentiality of medical records and the review materials, consistent with the requirements of the section and applicable state and federal law. An “or” was added to subdivision (a)(4). The phrases “Independent Medical Review” and “Independent Medical Reviewer” were capitalized for consistency.

7. Modifications to section 9768.9 Procedure for Requesting an Independent Medical Review.

Subdivision (a) was amended to include a comma after the word “Additionally,” and to capitalize “Section.” Subdivisions (d) and (e) were amended by striking the word “list” and adding the word “panel” in order to comply with the statutory language of Labor Code section 4616.4(a)(3)(C).

Throughout the section, the phrases “Independent Medical Reviewer” and “Independent Medical Reviewers” were capitalized for consistency.

Subdivision (j) was also amended to state: “During this process, the employee shall remain within the MPN for treatment pursuant to section 9767.6.” This change was made to clarify that during the IMR process, any treatment received by the employee must be from MPN providers.

8. Modifications to section 9768.10 Independent Medical Review Application (Form).

The date at the top of the form was changed to 4/30/05. The phrase “or additional materials, such as medical records,” was added to the employee section of the form to inform the employee that he or she may send additional materials to the IMR. “And treatment information” was replaced by the word “records” as “relevant medical records” is now defined in the definitions to include all the records that the MPN Contact is required to send to the IMR.

The instructions for the application form was revised to instruct the MPN Contact to send the employee’s “relevant medical records as defined by section 9768.1(a)(11).” This change is consistent with the employee’s release and section 9768.11.

Two specialty codes were changed. “MTO” was changed to “MTX” because “MTO” was listed for two different specialty codes. “MHA” was changed to “MHD” because “MHA” was listed twice.

The phrases “Independent Medical Review” and “Independent Medical Reviewer” was capitalized throughout the section for consistency.

9. Modifications to section 9768.11 In-Person Examination or Record Review IMR Procedure.

Subdivision (a) was revised to require the MPN Contact to send the IMR all relevant medical records. The language describing which documents must be included was stricken as the term “relevant medical records” is now defined in section 9768.1(a)(11) to include the documents described in Labor Code section 4616.4 and the additional documents previously listed in this section. The phrase “Independent Medical Reviewer” was capitalized for consistency.

The phrase “or additional materials” was added to subdivision (a) to allow the employee to send additional materials to the IMR. In subdivisions (j) and (k), the phrase “Independent Medical Review” was capitalized for consistency.

10. Modifications to section 9768.12 Contents of Independent Medical Review Reports.

The phrases “Independent Medical Review” and “Independent Medical Reviews” were capitalized for consistency.

11. Modifications to section 9768.14 Retention of Records by Independent Medical Reviewer.

The phrase “Independent Medical Review” was capitalized for consistency.

12. Modifications to section 9768.15 Charges for Independent Medical Reviewers.

The phrase “Independent Medical Review” was capitalized for consistency.

13. Modifications to section 9768.16 Adoption of Decision.

The phrase “Independent Medical Reviewer” was capitalized for consistency.

THE FOLLOWING NON-SUBSTANTIVE / CORRECTIONS WITHOUT REGULATORY EFFECT WERE MADE TO THE TEXT OF THE REGULATIONS AFTER THE CLOSE OF THE FINAL COMMENT PERIOD

1. Modifications to section 9768.10 Independent Medical Review Application (Form).

A request for the fax number of the employee, employee’s attorney and the MPN Contact was added to the form as this will be helpful to the Division when contacting the parties. On the instructions section of the form, “Independent Medical Reviewers” was changed to “Independent Medical Reviewer” to correct the grammar. The sentence “Please wait until you read the report from the third opinion doctor before you fill out this form,” has been put in bold type for emphasis.

UPDATE OF MATERIAL RELIED UPON / DOCUMENTS ADDED TO RULEMAKING

FILE

In addition to the documents identified in the Initial Statement of Reasons the following documents were relied upon by the Division and were made available to the public as required by Government Code Section 11347.1.

Title of Document Added to Rulemaking File	Dates of Availability for Public Comment
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Comments received by the Division of Workers' Compensation concerning the Division's proposed changes.	January 28, 2005 through March 16, 2005 March 30, 2005 through April 14, 2005.
Pre-Notice comments from DWC Forum	October 27, 2005 through November 5, 2004 November 24, 2004 through December 3, 2004

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed amendments do not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective and less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the following charts.

The public comment period was as follows:

Initial 45-day comment period on proposed regulations:

January 28, 2005 through March 16, 2005.

First 15-day comment period on modifications to proposed text:

March 30, 2005 through April 14, 2005.